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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 DAMION JAY PHILLIPS,
15 Defendant.
16

CASE NO. 2:20-CR-00207-JAM
STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER
DATE: March 2, 2021
TIME: 9:30 a.m.
COURT: Hon. John A. Mendez

17 This case is set for a status conference on March 2, 2021. On May 13, 2020, this Court issued
18 General Order 618, which suspends all jury trials in the Eastern District of California “until further
19 notice,” and allows district judges to exercise their discretion to continue all criminal matters on a case-
20 by-case basis. This and previous General Orders were entered to address public health concerns related
21 to COVID-19.

22 Although the General Orders address the district-wide health concern, the Supreme Court has
23 emphasized that the Speedy Trial Act’s ends-of-justice provision “counteract[s] substantive
24 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
25 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
26 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
27 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
28 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
4 justice continuances are excludable only if “the judge granted such continuance on the basis of his
5 findings that the ends of justice served by taking such action outweigh the best interest of the public and
6 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
7 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
8 the ends of justice served by the granting of such continuance outweigh the best interests of the public
9 and the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767–68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.
19 In light of the societal context created by the foregoing, this Court should consider the following case-
20 specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice
21 exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the
22 status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial
23 continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
26 through defendant’s counsel of record, hereby stipulate as follows:

27 _____
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 1. By previous order, this matter was set for status on March 2, 2021.

2 2. By this stipulation, defendant now moves to continue the status conference until April 6,
3 2021, and to exclude time between March 2, 2021, and April 6, 2021, under Local Code T4.

4 3. By this stipulation, the parties also request that the Court vacate the previously adopted
5 briefing schedule for a motion to suppress and, instead, adopt the below briefing schedule:

6 a) The defendant shall file any motion to suppress by April 6, 2021;

7 b) The United States shall file any opposition by April 20, 2021; and

8 c) The defendant shall file any reply by April 27, 2021.

9 4. The parties further agree and stipulate, and request that the Court find the following:

10 a) The government has represented that the discovery associated with this case
11 includes investigative reports and related documents, criminal history documents, and other
12 paper documents, along with several photographs and video files provided by the California
13 Highway Patrol. The government has also obtained certain files from a cell phone belonging to
14 defendant that was searched pursuant to a warrant issued by this Court. All of this discovery has
15 been, or soon will be, either produced directly to counsel and/or made available for inspection
16 and copying.

17 b) In light of this discovery, counsel for defendant desires additional time to consult
18 with his client, to review the current charges, to conduct investigation and research related to
19 those charges, to review and copy discovery for this matter, to inspect physical evidence seized
20 and/or otherwise available concerning this matter, to discuss potential resolutions with his client,
21 to consider and/or prepare pretrial motions, and to otherwise prepare for trial.

22 c) Moreover, in addition to the general public-health concerns cited by General
23 Order Nos. 611 and 612 issued by this Court on March 17 and 18, 2020, and presented by the
24 evolving COVID-19 pandemic, which the parties incorporate herein, an ends-of-justice delay is
25 particularly apt in this case because counsel have been encouraged to telework and minimize
26 personal contact to the greatest extent possible, and—consistent with that public-health
27 guidance—it will be difficult for defense counsel to fully investigate the facts of this case in
28 advance of the currently scheduled hearing.

1 d) Counsel for defendant believes that failure to grant the above-requested
2 continuance would deny him the reasonable time necessary for effective preparation, taking into
3 account the exercise of due diligence.

4 e) The government does not object to the continuance.

5 f) Based on the above-stated findings, the ends of justice served by continuing the
6 case as requested outweigh the interest of the public and the defendant in a trial within the
7 original date prescribed by the Speedy Trial Act.

8 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
9 et seq., within which trial must commence, the time period of March 2, 2021 to April 6, 2021,
10 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
11 because it results from a continuance granted by the Court at defendant's request on the basis of
12 the Court's finding that the ends of justice served by taking such action outweigh the best interest
13 of the public and the defendant in a speedy trial.

14 5. Nothing in this stipulation and order shall preclude a finding that other provisions of the
15 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
16 must commence.

17 IT IS SO STIPULATED.

18
19
20 Dated: February 24, 2021

McGREGOR W. SCOTT
United States Attorney

21
22 /s/ AARON D. PENNEKAMP
AARON D. PENNEKAMP
Assistant United States Attorney

23
24
25 Dated: February 24, 2021

/s/ DOUG BEEVERS
DOUG BEEVERS
Counsel for Defendant
DAMION JAY PHILLIPS

FINDINGS AND ORDER

IT IS SO FOUND AND ORDERED this 24th day of February, 2021.

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE